

SO ORDERED.

SIGNED this 26th day of June, 2020.



The signature of Lena Mansori James is written in cursive above a horizontal line.

LENA MANSORI JAMES

UNITED STATES BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION**

IN RE:

 ROBERT B. ALLEY,
Debtor.

Case No. 19-50716

Chapter 13

ORDER DENYING MOTION TO MODIFY PLAN

THIS MATTER came before the Court on the Debtor's filing of a Motion to Modify Plan to Extend Plan Length and Reduce Plan Payments Due to COVID-19 Related Hardship (Docket No. 50, the "Motion"). In the Motion, the Debtor requests relief pursuant to the recently enacted Coronavirus Aid, Relief and Economic Security Act ("CARES Act"), which, among its intended purposes, is designed to provide short-term relief to chapter 13 debtors affected by the COVID-19 pandemic. Specifically, the Debtor moves to modify his confirmed plan, pursuant to § 1329(d), to (1) extend the plan length from sixty months to eighty-four months, (2) reduce the plan payment "to an amount as low as possible," (3) reduce monthly payments to secured creditors to an amount necessary to pay the remainder of their claims over the extended eighty-four month term, (4) modify the base amount "as necessary," and (5) allow a \$250 attorney fee for the filing and prosecution of the Motion. In support of the Motion, the Debtor represents that he suffered a reduction in income after he was forced into quarantine for 14 days and lost numerous overtime hours due to the COVID-19 pandemic. The Debtor asserts this loss in income has made it challenging to remain current on plan payments.

The CARES Act permits chapter 13 debtors, whose plans were confirmed prior to its enactment on March 27, 2020, to extend their plan payments for up to seven years after the initial payment was due. To facilitate this extension, the CARES Act amends 11 U.S.C. § 1329 by adding the following new subparagraph:

- (d)(1) Subject to paragraph (3), for a plan confirmed prior to the date of enactment of this subsection, the plan may be modified upon the request of the debtor if –
 - (A) the debtor is experiencing or has experienced a material financial hardship due, directly or indirectly, to the coronavirus disease 2019 (COVID-19) pandemic; and
 - (B) the modification is approved after notice and a hearing.
- (2) A plan modified under paragraph (1) may not provide for payments over a period that expires more than 7 years after the time that the first payment under the original confirmed plan was due.
- (3) Sections 1322(a), 1322(b), 1323(c), and the requirements of section 1325(a) shall apply to any modification of paragraph (1).

Pub. L. No. 116-136, § 1113(b)(1)(C).

While the Debtor's loss of income, due to a temporary quarantine and the loss of overtime hours, may meet the definition of "material financial hardship," the CARES Act and § 1329(d)(1)(B) allow for plan modification only "after notice and a hearing." As with any motion to modify under § 1329, the movant must provide sufficient notice to affected creditors of the proposed changes to the confirmed plan. As one court described, "[n]o one should be required to guess – and no one is entitled to guess – as to what a proposed plan modification means." *In re Walker*, No. 07-70358, 2010 WL 4259274, at *5 (Bankr. C.D. Ill. Oct. 21, 2010); *see also In re Phillips*, No. 05-81458, 2006 Bankr. LEXIS 4021, at *5 (Bankr. S.D. Tex. June 7, 2006) (denying motion to modify and finding that, "[i]n the context of a proposed modification, creditors have a right to appropriate notice of the terms of the proposed modification."). In the Motion, the Debtor did not provide any estimate of the modified plan payment amount, nor any estimates for the amounts by which payments to individual secured creditors would decrease. The Court appreciates that any estimates provided in a motion to modify under § 1329(d) may be subject to revision after the Trustee's review. Nevertheless, the Debtor's requests to decrease his plan payment "to an amount as low as possible," as well as decrease payments to

secured creditors in an unspecified amount described only as “reduced,” do not provide the degree of fair notice to affected creditors required by § 1329.

Accordingly, IT IS HEREBY ORDERED that the Debtor’s Motion to Modify Plan is denied without prejudice to the Debtor’s right to refile a similar motion that provides adequate notice to affected parties of the proposed plan modifications.

END OF DOCUMENT

PARTIES TO BE SERVED

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19-50716 C-13

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